

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

LUPE CORTEZ,

Defendant.

CASE NO. 8:14CR363

MEMORANDUM AND ORDER

This matter is before the Court on Filing No. 260, entitled “Motion Pursuant to 28 U.S.C. § 2255 to Correct/Modify Sentence Pursuant to U.S.S.G. App. C. Amend. 794”, submitted by the Defendant, Lupe Cortez. In her motion, the Defendant is requesting an “amended Judgment reducing the Defendant’s sentence to reflect the two or four level reduction for a minor or minimal role.” The Defendant believes that she was “ . . . substantially less culpable than the co-defendants on her case . . .”, and asserts her participation in the conspiracy to distribute illegal drugs was “a minimal role because I was making deposits of drug proceeds” and that she “wasn’t selling drugs.”

Upon review of the parties' plea agreement signed by the Defendant on March 23, 2015, she admitted that she knowingly and intentionally became involved in a conspiracy to distribute 50 grams or more of methamphetamine (actual) and an amount of marijuana, and that the Defendant assisted her brother during the course of the conspiracy by receiving methamphetamine and collecting drug proceeds that she would forward to her brother in Mexico. (Filing No. 117 at 2.)

Also, under the Defendant's plea agreement, she waived her right to seek post-conviction relief except for (a) "The right to timely challenge the defendant's conviction and the sentence of the Court should the Eighth Circuit Court of Appeals or the United States

Supreme Court later find that charge to which the defendant is agreeing to plead guilty fails to state a crime.” or (b) “The right to seek post-conviction relief based on ineffective assistance of counsel.” (Filing No. 117 at 6.)

The Defendant did not object to any of the information contained in Presentence Investigation Report (“PSR”) which contains the Defendant’s statement: “I was involved in participating in the conspiracy of receipt of substance containing methamphetamine and marijuana. I voluntarily joined in the agreement of the distribute of prohibited drugs.” (Filing No. 156 at 5). It is clear from the Defendant’s plea agreement and statement found in the PSR that she was aware of the nature and extent of the conspiracy, and played a significant role.

According to the PSR, the Court notes the Defendant received the following reductions: a safety value reduction of two-levels; a two-level reduction for a minor participant role; an additional two-level reduction for acceptance of responsibility; and a one-level reduction on the government’s motion.

The Court has reviewed the record of the proceedings, as well as the language contained in the §3B1.2 of the guidelines regarding mitigating role, including application note 3(C), and finds that the Defendant’s request for a minimal role reduction to be untimely and without merit. Therefore,

IT IS ORDERED:

1. Defendant Lupe Cortez’s Motion Pursuant to 28 U.S.C. § 2255 to Correct/Modify Sentence Pursuant to U.S.S.G. App. C. Amend. 794 (Filing No. 260) is denied; and

3. The Clerk is directed to mail a copy of this Memorandum and Order to the Defendant at her last known address.

DATED this 1st day of December, 2016.

BY THE COURT:

s/Laurie Smith Camp
Chief United States District Judge